WISCONSIN LEGISLATIVE COUNCIL
AMENDMENT MEMO

2003 Assembly Bill 665	Assembly Substitute Amendment 1 and Assembly Amendment 1 to Assembly Substitute Amendment 1
Memo published: **March 11, 2004**	***Contact***: **Nicholas Zavos, Staff Attorney (266-1308)**

BACKGROUND

Current law contains a number of provisions relating to consumer loans. 2003 Assembly Bill 665 (the bill) creates a number of new requirements relating to payday loans. In a typical payday loan transaction, a creditor accepts a personal check from the borrower, pays the borrower the amount of the check less a finance charge, and agrees to wait a short period, such as a week or two, before depositing the check.

Under the bill, the payday lender must provide the borrower with a comparison of the cost of the payday loan if it is paid in full when due with the cost of the payday loan if it is paid in full after being refinanced three times. In addition, the lender must provide the borrower with a number of notifications. The lender must notify the borrower, among other things, that a payday loan should only be used for a financial emergency, and that the borrower may cancel the transaction at any time before receiving the funds.

THE AMENDMENTS

The substitute amendment makes five changes to the bill. The simple amendment makes some changes that relate to the changes made by the substitute, and some that are independent. First, the **substitute amendment** modifies the consumer's right to cancel. The substitute extends the time period in which the borrower may cancel the transaction from any time before receiving the funds to any time before the close of the next business day. In addition, the substitute makes the right to cancel an explicit statutory right. Under the bill, the lender was required to notify the borrower of the right to cancel, but there was no explicit statutory statement that the borrower had that right. The **simple amendment** changes the wording of this right. The substitute provides that the payday lender "...shall cancel the transaction at no cost to the applicant if the applicant cancels the transaction...." The simple amendment provides that an applicant "shall have no obligation to pay interest and fees related to [the

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loan, and]...shall have no payment obligations related to the payday loan if the applicant returns the principal.…"

Second, **the substitute amendment** adds a prohibition on threatening criminal prosecution. Under the substitute, a payday lender may not threaten or pursue criminal action against a borrower because the borrower's check did not clear. The **simple amendment** changes the wording from "threaten or pursue criminal action" to "initiate or threaten to initiate criminal prosecution." In addition, the simple amendment specifies that a payday lender is not prohibited from cooperating with a law enforcement agency that has started an independent criminal action.

Third, the **substitute amendment** prohibits a payday lender from adding a new fee or increasing an existing fee if a borrower defaults. The **simple amendment** eliminates this prohibition.

Fourth, the **substitute** caps payday loans at $5,000 per loan. The department is directed to adjust the $5,000 figure annually based on inflation.

Fifth, the **substitute** caps the term of payday loans. Under the substitute, no payday lender may make a payday loan with a term of longer than 35 days.

The **simple amendment** makes two additional changes. Under both the substitute amendment and the bill, the Department of Financial Institutions (department) is given the power to promulgate rules relating to three areas: (1) the method for calculating the comparison between repaying the loan in full with repaying the loan after refinancing three times; (2) the form and content of the educational materials to be distributed to borrowers; and (3) the efficient administration of the section. The simple amendment eliminates the department's authority to promulgate rules for the efficient administration of the section, and adds authority for the department to promulgate rules for the annual adjustment of the maximum amount of a payday loan.

In addition, the simple amendment prohibits a payday lender from refinancing or "rolling over" a payday loan more than four consecutive times.

LEGISLATIVE HISTORY

On January 21, 2004, the Assembly Committee on Financial Institutions adopted Assembly Substitute Amendment 1 by a vote of Ayes, 15; Noes, 0. On March 10, 2004, Assembly Amendment 1 to Assembly Substitute Amendment 1 was adopted on the floor of the Assembly.

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